

***IN THE UNITED STATES PATENT AND TRADEMARK OFFICE***

Applicant: Bob Tang

Title: INTERNET TIME MULTIPLEXED CIRCUIT  
CONNECTION FOR WIRE SPEED  
CONNECTION AKIN TO PSTN SWITCHED  
CIRCUIT CONNECTION SUITABLE FOR  
MULTIMEDIA/VOICE/FAX/REALTIME  
APPLICATIONS

Appl. No.: 09/779,939

Filing Date: 2/9/2001

Examiner: Ajit Patel

Art Unit: 2617

Confirmation 4135

Number:

**REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT  
UNDER 37 C.F.R. §1.705**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Applicant is in receipt of the Notice of Allowance for the above- captioned application. Applicant disagrees with the Determination of Patent Term Adjustment (PTA) under 35 U.S.C. § 154(b) and presents the following facts per the procedure set forth in 37 C.F.R. § 1.705(b) to support their contention that the patent term adjustment should be 834 days instead of 64 days as calculated by the United States Patent and Trademark Office (PTO).

The Patent Office determined that the patent was entitled to 64 days of PTA. Applicants believe that this PTA determination was made in accordance with the “Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. §154(b)(2)(A)” published at 69 Fed. Reg. 34238 (Jun. 21, 2004). Under that interpretation of the PTA statute, any PTO delay under 35 U.S.C. § 154(b)(1)(A) is deemed to overlap with any 3-

year maximum pendency delay under 35 U.S.C. § 154(b)(1)(B), and so, as a practical effect, PTA may be awarded under §154(b)(1)(A) or §154(b)(1)(B), but not both.

On September 30, 2008, the United States District Court for the District of Columbia issued a decision finding that the U.S. Patent and Trademark Office's interpretation of the PTA statute is incorrect. *Wyeth v. Dudas*, Civ. Action No. 07-1492 (JR) (Sep. 30, 2008). The court determined that, under the correct interpretation of the PTA statute, periods of "overlap" are limited to "periods of time . . . [that] occur on the same day." *Wyeth*, slip op. at 8. Thus, a PTO delay under §154(b)(1)(A) overlaps with a delay under §154(b)(1)(B) only if the delays "occur on the same day." *Id.*

Applicants have recalculated PTA for the captioned patent under the court's interpretation of the PTA statute, and have determined that the patent is entitled to 834 days PTA, as shown on the attached sheet, which shows the relevant delays under 37 CFR §§1.702(a) and (b), and under 37 CFR §§1.703(a) and (b).

The attached sheet details the circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

(a) Total of non-overlapping PTO delay under §154(b)(1)(A) & (B):	1569 days
(b) Total Applicant delay:	735 days
Final PTA Determination:	834 days

Applicants therefore respectfully request that the patent be accorded 834 days PTA.

The patent is not subject to a terminal disclaimer.

Payment of the requisite fee is submitted herewith. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

However, because this PTA error is due to a Patent Office error in interpreting and applying the PTA statute, a refund of the fee is respectfully requested.

Respectfully submitted,

By



Date January 30, 2009

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Docket Number: 088245-3380  
 Application Number: 09/779939  
 Patent Number: N/A

Event Description	Event Date	Days from Filing	PTO Days	Applicant Days
Application Filing Date	02/09/2001	0		
14 month From Application date	04/09/2002	424		
3 Year Period Starts	02/09/2004	1,095		
Non-Final Office Action	06/16/2004	1,223	(799)	
Non-Final Office Action Rsp. Rcv'd at PTO	09/15/2004	1,314		
Non-Final Office Action + 3 months	09/16/2004	1,315		
Non-Final Office Action Rsp. Rcv'd at PTO + 4 mo	01/15/2005	1,436		
Notice of Non-Compliance	05/05/2005	1,546	(110)	
Non-Final Office Action Rsp. Rcv'd at PTO	11/04/2005	1,729		(415),(414) 415
Final Office Action	01/26/2006	1,812		
Final Office Action + 3 months	04/26/2006	1,902		
Final Office Action Response Received at PTO	05/26/2006	1,932		
Advisory Action	06/20/2006	1,957		
Request For Continued Examination	07/26/2006	1,993		91
3 Year Period Stopped	07/26/2006	1,993	(898) 1569	
Non-Final Office Action	10/04/2006	2,063		
Non-Final Office Action + 3 months	01/04/2007	2,155		
Non-Final Office Action	02/21/2007	2,203		
Non-Final Office Action + 3 months	05/21/2007	2,292		
Non-Final Office Action Rsp. Rcv'd at PTO	08/21/2007	2,384		(229),(92) 229
Non-Final Office Action	11/05/2007	2,460		
Non-Final Office Action Rsp. Rcv'd at PTO	01/16/2008	2,532		
Final Office Action	04/17/2008	2,624		
Final Office Action Response Received at PTO	06/11/2008	2,679		
Notice of Allowance	07/14/2008	2,712		
Request For Continued Examination	10/08/2008	2,798		
Notice of Allowance	11/04/2008	2,825		

Projected Patent Grant Date

05/19/2009 3,021

Totals: 1,569

735

PTA:

834



Version: 3.02.04

LOGIN: Foley &amp; Lardner

IP: 10.24.4.83

Foley &amp; Lardner LLP